

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS

Approved by the Rules Committee on February 8, 2011.

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Reporter's Note: This rule is amended to reflect current practice and to eliminate provisions which violate with DUCiv R 5.2-1 Privacy Protections. An individual party may move for a designated or qualified settlement funds amending provisions which only provided for a joint motion. The obligation of the clerk to invest deposited funds in interest bearing accounts is modified to begin when the funds have been cleared by the bank and are in the possession of the clerk. Finally, personal information concerning the payee will not be required in the public order for the disbursement of funds.

(a) Court Orders Pursuant to Fed. R. Civ. P. 67.

Any party seeking to make a Rule 67 deposit, with the exception of criminal cash bail, cost bonds, and civil garnishments, must make application to the court for an order to invest the funds in accordance with the following provisions of this rule.

(b) Provisions for Designated or Qualified Settlement Funds.

(1) By Motion. Where ~~the parties jointly~~ **a party** seeks to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the party~~ies~~ must identify the deposit as such in a ~~joint~~ motion ~~and stipulation~~ for an order to deposit funds in the court's registry. Such motion also must recommend to the court an outside fund administrator who will be responsible for (i) obtaining the fund employer identification number, (ii) filing all fiduciary tax returns, (iii) paying all applicable taxes, and (iv) otherwise coordinating with the fund depository to ensure compliance with all IRS requirements for such funds.

(2) By Settlement Agreement. Where the parties enter into a settlement agreement and jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the settlement agreement and proposed order must (i) identify the funds as such, and (ii) recommend to the court an outside fund administrator whose responsibilities are set forth in subsection (b)(1) of this rule.

(3) Order of the Court. A designated or qualified settlement fund will be established by the clerk only on order of the court on motion ~~and stipulation by all parties~~ or on acceptance by the court of the terms of the settlement agreement. The court reserves the authority to designate its own outside fund administrator.

(c) Deposit of Required Undertaking or Bond in Civil Actions.

In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the clerk of court may accept an undertaking or

bond at the time the complaint is filed in an amount not less than \$300.00. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.

(d) Registry Funds Invested in Interest-Bearing Accounts.

On motion and under Fed. R. Civ. P. 67 or other authority, the court may order the clerk of court to invest certain registry funds in an interest-bearing account or instrument. Under to this rule, any order prepared for the court's signature and directing the investment of funds into an interest-bearing account or instrument must be limited to guaranteed federal government securities. Such orders also must specify the following:

- (1) the length of time the funds should be invested and whether, where applicable, they should be reinvested in the same account or instrument upon maturity;
- (2) where appropriate, the name(s) ~~and address(es)~~ of the designated beneficiary(ies); and
- (3) such other information appropriate under the facts and circumstances of the case and the requirements of the parties.

(e) Service Upon the Clerk.

Parties obtaining an order as described in section (d) of this rule must serve a copy of the order or stipulation personally upon the clerk of court or the chief deputy clerk.

(f) Deposit of Funds.

The clerk will take all reasonable steps to deposit funds that have been placed in the custody of the court into the specified accounts or instruments within ten (10) business days after having been served with a copy of the order or stipulation as provided in section (e) of this rule **and the funds have been cleared by the bank.**

(g) Disbursements of Registry Funds.

Any party seeking a disbursement of such funds must prepare an order for the court's review and signature and must serve the signed order upon the clerk of court or chief deputy clerk. ~~The order must include the payee's full name, complete street address, and social security number or tax identification number.~~ **The order should specify the payee. The party who will receive the disbursement shall furnish required personal information to allow the financial administrator to issue a check and provide necessary tax documents.** Where applicable, such orders must indicate whether, when released by the court, the investment instruments should be redeemed promptly, subject to possible early withdrawal penalties, or held until the maturity date.

(h) Management and Handling Fees.

All funds -- including criminal bond money deposited at interest -- invested into accounts or instruments that fall under the purview of section (d) of this rule may be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of the miscellaneous

fee schedule established by the Judicial Conference of the United States and as set forth in 28 U.S.C. § 1914, the clerk of court will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts.

(i) Verification of Deposit.

Any party that obtains an order directing, and any parties stipulating to, the investment of funds by the clerk must verify, not later than fifteen (15) days after service of the order as provided by section (e) of this rule, that the funds have been invested as ordered or stipulated.

(j) Liability of the Clerk.

Failure of any party to personally serve the clerk of court or chief deputy clerk with a copy of the order or stipulation as specified in section (e), or failure to verify investment of the funds as specified in section (i) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.